

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of a New Proposed Rule)
4 CSR 240-33.045)

Case No. TX-2005-0258

ALTERNATIVE RULEMAKING PROPOSAL CONSIDERED BY THE COMMISSION

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through its Office of General Counsel, and files the attached alternative rulemaking proposal that was considered and rejected during the Commission’s August 9, 2005 Agenda. The Commission’s Final Order of Rulemaking, filed with the Secretary of State on August 9, 2005, adopted a different version of the rule. The Staff submits this alternative version, attached and labeled “Appendix A,” for the Commission’s records.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to the Office of the Public Counsel this 11th day of August 2005.

/s/ Marc Poston

Marc D. Poston

**Title 4 – DEPARTMENT OF ECONOMIC
DEVELOPMENT**

**Division 240 –Public Service Commission
Chapter 33—Service and Billing Practices
for Telecommunications Companies**

PROPOSED RULE

4 CSR 240-33.045 – Requiring Clear Identification and Placement of Separately Identified Charges on Customer Bills.

(1) All telecommunications companies shall provide a clear, full and meaningful disclosure of all monthly charges and usage sensitive rates that are applicable to the services the customer has ordered or is considering ordering. Such disclosure shall be provided at the time of the execution of a service agreement between the company and the customer or at the time the customer otherwise contracts with the company, but in any event prior to the date service is initiated an agreement for service. This disclosure shall be in addition to the itemized account of monthly charges during the customer's first billing period for the equipment and service for which the customer has contracted, as required by 4 CSR 240-33.040(8). Allowed charges that may vary, depending on the location of the customer or the amount of the customer bill, can simply be identified without specifying the specific dollar amount that would be applied to the customer.

(2) For purposes of this rule, the following definitions apply:

(A) Mandated government charges are charges that the telecommunications company is required to collect from the customer and is required to remit to a federal, state or local government, or a government appointed designee, pursuant to statute, rule or regulation. Mandated government charges are:

1. Relay Missouri surcharge;
2. Missouri Universal Service Fund surcharge; and
3. Emergency telephone service surcharge;

(B) Non-mandated government charges are charges that the telecommunications company is specifically authorized to collect pursuant to a federal, state or local government statute, rule or regulation, but such collection from its customers is at the telecommunication company's discretion. Non-mandated government charges are:

1. Local number portability surcharge;
2. Federal universal service fund surcharge;
3. Federal relay service surcharge;
4. Federal subscriber line surcharge; and
5. Excise tax, franchise tax, gross receipts tax and sales tax.

(3) Mandated government charges and non-mandated government charges shall not exceed the amount remitted to federal, state or local government or government appointed designee, plus any allowable cost recovery for administering the charge, unless the telecommunications company is specifically authorized by federal, state or local government to retain the amounts collected in which case the charges shall not exceed the amount authorized.

(4) Any charge on a customer's bill other than the charge for each service, penalty charges, deposits, unregulated services, mandated government charges and non-mandated government charges is prohibited unless the commission finds that the charge clearly facilitates competition and the customer is clearly notified consistent with the requirements of section (1) of this rule. The charge for each service is the single flat recurring charge and/or usage based charge for the service, and shall not include any other charges that are in addition to and separately stated from such charge for the service. A customer's bill may also include past due amounts and partial-month charges for the service. In determining whether a charge facilitates competition, the commission shall determine whether the charge inhibits or otherwise prevents customers from accurately comparing prices for similar services by other companies.

(25) ~~Telecommunications~~ companies ~~may~~ shall not include on a customer's bill any ~~fee or~~ charge misrepresented as ~~a governmentally a~~ mandated government charge or ~~authorized a~~ non-mandated government charge ~~fee~~ by:

(A) Disguising it;

(B) Naming, labeling or placing it on the bill in a way that implies that it is ~~governmentally a~~ mandated government charge or ~~authorized a non-mandated government charge~~; or

(C) Giving it a name or label that is confusingly similar to the name or label of a ~~governmentally~~ mandated government charge or ~~authorized a non-mandated government fee~~ charge.

(36) ~~Governmentally mandated or authorized fees and surcharges include, but are not limited to, separately identified charges to recover costs associated with any separate monthly charge mandated or authorized by federal, state or local government order, decision, ruling or mandate. These monthly~~All charges ~~or taxes~~ shall be identified on the customer's bill in easy to understand terms and in a manner consistent with their purpose or applicability.

(47) Companies imposing separately identified charges that appear to be ~~governmentally a~~ mandated government charge or ~~authorized a non-mandated government fees~~ charge shall provide, upon request by the ~~Commission~~ commission Staff ~~staff~~, such federal, state or local government order, decision, ruling, mandate or other authority on which it relies in placing such a charge on the customer's bill. ~~The presence of a charge in a currently effective tariff is not evidence, in and of itself, that the charge is authorized or mandated by the Commission~~

(8) For purposes of this rule, the presence of a charge in a currently effective tariff is not evidence, in and of itself, that the charge is allowed under this rule.

~~(59)~~ To challenge the authority or legality of a tariffed charge under this rule, a party shall file a complaint pursuant to 4 C.S.R. 240-2.070. Thereafter, the commission shall determine whether the charge complies with this rule. If the charge is in a currently existing tariff the burden shall be on the complainant to show the charge should be disallowed. If the authority or legality of a proposed tariff charge is challenged under this rule, the burden shall be on the company filing the tariff to show that the charge should be allowed. Based on a complaint,
The Commission may order removal or modification of any charge it finds does not comport with this rule. Nothing in this rule will preclude the Commission from suspending or rejecting company tariffs when similar or identical tariffs have been approved for other companies.

~~(6) This rule establishes minimum requirements for clarity in billing separately identified charges.~~

~~(710)~~ Any telecommunications company that serves as a billing agent for another entity shall not be held liable for any violation of this rule for that portion of the customer bill that relates to that other entity.

(11) This rule establishes minimum requirements for clarity in billing separately identified charges. All telecommunications companies shall be in compliance with this rule within six (6) months after the effective date of this rule.